

June 3, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

In the Matter of

Applications of AT&T Inc. and
Deutsche Telekom AG

WT Docket No. 11-65
DA 11-799
ULS File No. 0004669383

For Consent to Assign or Transfer
Control of Licenses and Authorizations

Comments Opposing the Consent

Dear Chairman Genachowski, Commissioners Copps, McDowell, Clyburn and
Secretary Dortch:

Please regard this letter as comment in opposition to the proposed merger of AT&T Inc. and T-Mobile USA, Inc. I urge the Federal Communications Commission to deny the petition to transfer the control of the licenses and authorizations held by T-Mobile USA, Inc. to AT&T as it will have a detrimental impact on national and local markets for wireless services and is therefore not in the public interest.

As a state utility commissioner for over six years, I am keenly aware of the telecommunications landscape. While my primary focus is on the traditional wireline companies subject to state regulation, our state commission frequently has dockets that directly or indirectly impact wireless companies, and the major national wireless carriers are active parties in those dockets.

The regulation of wireless telecommunications and data provision is almost wholly overseen by the FCC. However, as a local regulator of the telecommunications industry it is abundantly clear that wireless telecommunication plays a larger role each year in the ability of consumers to access voice and data services. In fact, the number of wireless access lines exceeded the number of wired (PSTN) lines in New Mexico sometime around 2004.

Many factors account for the competitive success of wireless carriers vis a vis traditional land lines. Obviously, the inherent mobile nature of wireless is very important. But we've also seen a proliferation of new and innovative technologies and services, evolving service packages and plans, and a trend towards increasing value. All these things contribute to customer demand and satisfaction.

It would be a mistake to attribute the rapid innovation and success of the wireless industry to-date directly to the basic cellular technology. Wireless technology made it possible for multiple carriers to economically operate in the same service territory, but intense competition between those carriers is what forced the rapid innovation in technology, features, and business models.

As I'm sure FCC commissioners are aware, there is another telecommunications industry that paints a very different picture, an industry that is characterized by a lack of responsiveness to consumer preferences and a general consumer perception of decreasing value. I am speaking of the cable TV/satellite TV industry. This industry has a high-tech platform (what could be more high-tech than satellites in space), but what it doesn't have is a sufficient number of competitors to create effective competition.

Consolidation in the wireless industry from the "wild west" era of the 1990s was both inevitable and necessary to create national footprints and the platforms needed to roll-out the latest innovations. But now we have come to a bridge too far. After the Verizon-Alltel merger, there are four national wireless carriers remaining. If you approve the merger between AT&T and T-mobile that will leave only three - the magical, dysfunctional number of players in the cable/satellite TV arena in most markets.

Moreover, there's a strong possibility that the market will not remain at three national carriers after this merger due to the relative sizes and other characteristics of the surviving companies. In approving this merger, the FCC may very likely be blessing a terminal state of duopoly.

The potential detrimental effects of the merger may be exacerbated in largely rural states like New Mexico. In New Mexico, mobile/wireless customers depend on national and regional carriers to give them access to voice and data services. The comments to the House Committee on the Judiciary of Steven Berry, President and CEO of the Rural Cellular Association, highlights the anti-competitive nature of this transaction for rural customers. AT&T is both a competitor for services as well as a potential provider (or withholder) of key inputs for rural carriers. With the consolidation of GSM services, AT&T will increasingly have power to drive these important regional carriers out of business by denying them the right, or charging exorbitant prices, to utilize their national infrastructure thereby denying roaming availability. Based on previous mergers it does not appear that any conditions imposed by the FCC would provide adequate relief either to these rural carriers or any other competition that would be affected negatively by this merger.

The President's Broadband Initiative also may find itself facing unnecessary economic barriers as a result of this merger. The need for spectrum utilization and 4G capabilities are key to the President's Initiative, both of which will be undercut by a company that holds the keys to spectrum availability and efficiency as well as the 4G capabilities that now belong to T-Mobile.

The taxpayer may see an increased price tag for investment into the Broadband Initiative as a result of infrastructure, network and service consolidation.

One of the tenets of economic regulation is that the regulator should not prejudice the interests of consumers and competitors in order to ameliorate adversity that a regulated entity may have created for itself through its own decisions and strategies. Whether AT&T has thoughtfully utilized or planned for the utilization of its spectrum resources may be at question. AT&T's claim that it is under greater spectrum constraint than other carriers is belied by its current holdings, which are greater than any of the other national carriers and regional carriers.

At this stage of the proceedings, there are more questions than answers in the information provided by AT&T. What is unquestionable is that if this transaction were to be allowed, there would be one less national service provider and one less major competitor.

When the FCC originally created licenses for duopolies in each geographic area of the country, mobile voice services were considered a luxury among consumers. As mobile technology evolved it was clear that this strategy did not provide adequate competition. The competition that was created by the Commission in the 1990s has served the growth in the marketplace, and in research and development of new technologies. Today, mobile services are no longer a luxury, but a necessity. In both rural and metropolitan areas, for industry, government and individuals, mobile voice and data services are essential to carrying out everyday business. As the demand for these services becomes less elastic, the need for a competitive market is even greater.

We have experienced the profound changes in this incredibly important market over the last few decades. While technological breakthroughs have brought the consumer better and lower-priced devices it is competition that has lowered the cost of services. It is also competition that has fueled those breakthroughs in technology as companies compete for the business of carriers.

The potential for continued vibrant competition in the resulting market will be fundamentally flawed in a way that it is not possible to mitigate through the imposition of conditions on this merger. As a regulator concerned with the future of voice and data transmission, I urge you to deny the request of AT&T to take over the licenses of T-Mobile.

Sincerely,

Jason Marks
Commissioner
District 1
Public Regulation Commission of New Mexico